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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,243	10/04/2005	Sjoerd Gerard Vrijburg	4828-050784	2866
28289	7590	12/05/2006		
THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				EXAMINER PATEL, TAJASH D
				ART UNIT 3765 PAPER NUMBER

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding:

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/527,243	VRIJBURG, SJOERD GERARD	
	<b>Examiner</b> Tejash D. Patel	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 October 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 17-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/2/06</u> .  | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

### *Specification*

1. The disclosure is objected to because of the following informalities: The use of the trademark “Velcro” in has been noted in the specification. It should be capitalized wherever it appears in its entirety and be accompanied by the generic terminology such as -- hook and loop material --. Correction is required.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 17-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 17, on line 10, “the protective part” is indefinite since it lacks antecedent basis. Further, in claim 25, “the body made comprising plastic” is indefinite since it depends on claim 17, on lines 11-12, which states that “the body only consist of the elastic material”. Further, in claim 30, the use of the trademark “Velcro tape” should be amended to generic terminology such as -- hook and loop material --. Correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 17-21 and 23-25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated Clark (US 5,890,224). Clark discloses a device (10) worn about the leg including a protective body (12) with under and upper sides being made of only elastic material, col. 4, lines 55-60. The protective body wholly encloses the leg as seen in the horizontal direction with the underside defining a recess through which the foot is inserted therethrough and is positioned adjacent to the skin as shown in figure 1. Also, the device includes two support members (16,20) on an inner side of the protective body that which are substantially on either side of a front side thereof as shown in figures 1 and 3. Further, the body extends above the foot in a vertical direction as shown in figure 1.

With regard to claim 23, the thickness of the protective body will be variable because of stretch ability of the elastic material.

With regard to claim 24, the protective body being made of elastic material is dimensioned to fit about the leg, col. 2, lines 63-67.

Furthermore, with regard to claims 25 and 27, the protective body comprises a plastic (16) and foam (20), respectively.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22, 26, 28, and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark.

With regard to claim 22, it would have been obvious that one of the support member (20) of Clark can be made of the same resilient material as the protective body depending on the availability or depending on the particular end use thereof.

With regard to claims 26 and 28, it would have been obvious to one skilled in the art at the time the invention was made to recognize that the protective body of Clark comprising resilient foam can be substitute with neoprene, rubber, etc since such material are considered equivalent in the art.

With regard to claim 31, it is obvious that the device of Clark wholly worn about the leg defined a tubular sleeve is conventionally formed by a substantially vertical seam as known in the textile art.

Further, with regard to claim 32, it would have been obvious to provide the protective body of Clark can be provided with indicia or marking thereon as a matter of design choice or depending on the end use thereof.

8. Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Bear (US 5,926,844). Clark discloses the invention as set forth above except for showing the device having fastening means for fastening the protective body around the leg with hook and loop material.

Bear discloses a device (10) including a protective tubular body/sock (18) that is conventionally made of elastic material with a support member (17) positioned on an inner side thereof having in combination, fastening means (11) for fastening the protective body around the leg with hook and loop material (12,13) as shown in figures 1, 3 and 4.

It would have been obvious to one skilled in the art at the time the invention was made to provide the protective body of Clark with fastening means for fastening the protective body around the leg with hook and loop material as taught by Bear so that the support member is properly aligned relative to the leg or depending on the end use thereof.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (571) 273-8300.

November 19, 2006



**TEJASH PATEL**  
**PRIMARY EXAMINER**